

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
April 16, 2007, at 9:00 a.m.
DEQ Building, Room 111
1520 E. Sixth Avenue
Helena, Montana

PRESENT: Lt. Governor John Bohlinger, State Auditor John Morrison, Secretary of State Brad Johnson, Attorney General Mike McGrath and Superintendent of Public Instruction Linda McCulloch

Mr. Johnson moved for approval of the minutes from the March 19, 2007, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

BUSINESS CONSIDERED:

407-1 BIRD CREEK RANCH CONSERVATION EASEMENT (FWP)

Ms. Sexton said this is from FWP who is requesting approval for the acquisition of an easement on 2,292 acres of the Bird Creek Ranch property. This is four miles north of Cascade in Cascade County. It has riparian, wetland and native grass communities that are important for many species, there are three miles of Missouri River frontage. This is an easement that has partners, including Habitat Montana-FWP, but also PPL Montana and the USDA Farm and Ranch Protection Program (FRPP).

Larry Peterman, Chief Field Operations, FWP, said I am here to present the Bird Creek Ranch Conservation Easement. He handed out maps of the area. He said this is an important piece of property for FWP, it is located four miles north of Cascade on the Missouri River and is a special piece of property. If you look on the maps, we've got three, the first shows the general location of the property. The Conservation Easement area is outlined in red, just north of Cascade, it is 2,300 acres, approximately, and has three miles of river frontage. To the east of the property is 960 acres of DNRC trust land and there is a small chunk of BLM land within the Conservation Easement. The second map is a photograph of the ranch and you can see the river frontage, the agricultural land, off to the right is the native prairie pasture land. You see an extensive network of riparian vegetation throughout the ranch. These are old oxbow meanders where the Missouri River used to flow and now they are substantial wetlands. It is a very important area for white-tailed deer, mule deer, pheasants, sharp-tailed grouse, and Hungarian partridge on the property. The owner, Cindy Kittredge, came to us and was desiring a Conservation Easement on this land. It was the wish of her parents that this ranch remain a working ranch in perpetuity if there was a way they could do it and she was trying to carry out their wishes and looked at the Conservation Easement program as a way to do that. This is a partnership, the FWP portion of this is from our Habitat Montana program which tries to protect and preserve critical wildlife habitat areas and of the total value for the easement, which is \$1.4 million, Habitat Montana is putting in \$550,000. Almost \$400,000 comes from the NRCS program, the Farm Ranch Protection Program. That is a program designed to ensure that farms and ranches have the opportunity to remain farms and ranches and not get subdivided. It protects the agricultural base of the country. There is \$50,000 coming from PPL as part of their relicensing agreement from a number of years ago, they do a number of conservation and recreational things along the Missouri River. The landowner donation is \$102,000. This prevents subdivision of the land. There is a management plan that goes along with this that we entered into with the landowner that provides for restoration systems that provides for increasing or improving the habitat

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on it. There is a hunting access portion of this which provides for a minimum of 400 hunter days on the property and they have always allowed the public hunting. We will put two parking areas there and it is "walk-in" with the landowner managing the access. There is an associated a waterfowl protection enhancement program with the wetlands. That is basically the essence of the Conservation Easement. We did an EA and put it out for a 30-day comment period. We received 28 comments supporting it, and one comment opposed. We had a public meeting in Cascade and we also met with the Devil's Kitchen, a rancher-landowner work group out of Cascade that has been in existence for about 15 years and they were fully supportive. We brought this before the FWP Commission on March 29, 2007, and they approved it. Mr. Peterman asked for approval.

Mr. Johnson said I am assuming we are granting the easement in perpetuity.

Mr. Peterman said yes.

Mr. Johnson said in your remarks you stated the landowner would manage access to the property. Can you expand on that?

Mr. Peterman said the landowner has agreed to 400 hunter days of access and we would operate it similar to how we operate block management where we have parking areas. This is by permission so the person asks permission and it is open from Friday through Monday of the week and then it is rested for the middle of the week. You call the landowner and the landowner grants you permission and then you go and sign in and access the property.

Mr. Johnson asked those provisions are spelled out in the easement? We're not simply taking somebody's word for this?

Mr. Peterman said no, there is a hunting access agreement as part of this.

Mr. Johnson said the reason I raised the question is we've seen this in Gallatin County through that program a number of places where public money has been used to purchase those development rights and access was granted on a limited basis for compensation from those who were allowed to access it and a lot of folks are not pleased with that arrangement given the fact the easement was purchased with public money.

Motion was made by Mr. Morrison to approve the Bird Creek Ranch Conservation Easement. Seconded by Mr. Johnson. Motion carried unanimously.

307-1 REQUEST FOR FINAL APPROVAL FOR THE TRANSFER OF THE GLENDIVE
ARMORY TO DAWSON COUNTY §77-2-351, MCA

Ms. Sexton said we had preliminary approval for this at the March 2007 meeting. Today we are asking for final approval of the transfer through Department of Military Affairs of the Glendive Armory to Dawson County to use as a county shop and for county offices. They were initially going to put this out for public bid and then decided since there was an agreement with Dawson County to pay the \$50,000 still owed the federal government that Dawson County would do that and so they are going to go through a \$351 transfer to the County of Dawson. We are asking for final approval today contingent upon no significant public concern being expressed during the remaining public comment period. Dawson County is anxious to get this property but they are still under the public comment period. If there is significant opposition the department would return to the Board for further consideration.

Mr. Johnson said I would like to hear from either or both of the attorneys that are members of the Board as to whether or not this kind of open ended arrangement is problematic.

Mr. McGrath said in terms of the contingency?

Mr. Johnson said we have subjective language that says "significant opposition" and I am not sure who makes that determination.

Mr. McGrath said that is a subjective judgment. In this particular case there has been a lot of public comment throughout the process and public input. There was a public hearing on this so there has been substantial public comment. We would approve it contingent on additional comment that would be raised, I suspect the way the court would interpret it is if there are new issues that should cause the Board to reconsider if that comes up in the public comment period, then it would be incumbent upon the Board to do that. Otherwise if the recommendation is to go ahead and there is nothing new, then I think we are fine.

Mr. Johnson said could the Board structure this in a way that the Attorney General would review any additional comments that were made between now and the effective date?

Mr. McGrath said I would be happy to do that. We'll have Candace West do it too.

Motion was made by Mr. Morrison to grant final approval to the transfer of the Glendive Armory to the County of Dawson contingent upon the receipt of no significant public concern. Seconded by Mr. McGrath. Motion carried unanimously.

407-2 PRELIMINARY CONSIDERATION OF DNRC/ROCKY BOY LAND EXCHANGE

Ms. Sexton said this is a request for preliminary consideration of an exchange between the DNRC and the Chippewa Cree Tribe, Rocky Boy Reservation land exchange. There are members of the Tribe here today, Robert Belcourt who is head of the natural resources and Rick Morsette who is a councilman. Briefly, this is for preliminary consideration so we can move ahead with appraisals. This has been in the works for almost 2.5 years. Our staff has been working with members of the Tribal council as well. It is located in Hill County and is a proposal to exchange 1,440 acres of trust land which is within the Reservation boundaries and is classified as grazing for 320 acres of Tribally-owned land currently used as crop land. There are maps that show where the two pieces of land are located. The land within the Reservation is a contiguous piece and the crop land is two separate pieces that are 320 acres. We have had public involvement and received comments on this. The seven criteria for an exchange is listed in the agenda packet. The greater or equal value criteria will have to be determined through an appraisal, and again, we will have the appraisal done after the department receives preliminary approval from the Board. We don't know how the appraisal will come out so the criteria may be met pending the appraisal. Neither pieces of property are near navigable streams or lakes. For the equal or greater income criteria requirement the state currently receives \$2,500 per year in rental income from the grazing land, the crop land generates \$4,000 per year so there is a greater income to the trust. There is less acreage here although the equal or greater acreage criteria requirement is something there is discretion on and we have in other instances taken less acreage depending upon other issues surrounding the exchange. The consolidation of state land, again, although this is not consolidating state land it is desirable for us to reduce acreage that is within the boundary of the Reservation. There may be mitigating factors for the consolidation of state land requirement. For long term appreciation, the parcels are similar as far as long term appreciation. For

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access, as noted the existing state land does have access to it but recreational opportunities are regulated by the Chippewa Cree Tribe. Of the two parcels suggested, one has definite legal access and the other is located on a section line and in Hill County section line roads are considered legal access. We are looking into that there is further information we need to gather regarding access. It is my recommendation that maybe not all criteria may be met but I recommend preliminary approval so we can undergo further analysis including an appraisal and look after that point in time as to how we might move forward with an exchange.

Robert Belcourt, Chippewa Cree Tribe, said on behalf of my Chairman I wish to extend his best wishes to you, he would have been here in person but we have a very important meeting going on up there and Rick and I have been tasked with this. As Ms. Sexton indicated we are wishing to do a land exchange with the state. I don't have any handouts but if I can get my power point program to come on I'll share it with you for the record.

Rick Morsette, Chippewa Cree Tribal Councilman, said one of the biggest reasons we would like this land exchange is the land that the state owns is within the interior boundary of the Reservation and the land we want to exchange for is about 18 miles northwest of Box Elder. It is a long way for us to transport our farm machinery out there and it is not feasible for us to do that.

Mr. Belcourt said my program is not working, I am going to try and wing it. As Rick indicated the lands we wish to exchange are about 320 acres and of that 320 acres there is about 290 acres that are being farmed. Presently it is being leased to a farmer south of Hingham by the name of Mark Kornec. Mr. Kornec pays us an annual lease each year of \$4,800. I spoke with Mr. Kornec and he is well aware of what is going on. He indicated to me that he had both a barley and wheat crop on there. As you know, the crops have gone up substantially this year, I believe wheat goes for \$4.80 per bushel, higher than it was last year. West of Box Elder we have our own farms out there that does all the farming for our Reservation, there is approximately 10,000 acres within the Reservation boundary. Because it is so far out it is not worth it for us to take our equipment out there so we just lease it. When we purchased this land, the land is what they call the Turtle Mountain tracts, and they are held in trust by the U.S. Government and we purchased this back in the late 1970's with the intent of trading at some point in time. We do own 100% surface, 100% minerals, and 100% water rights out there. Like I indicated they are held in trust for the Chippewa Cree Tribe, the title transferred over from Turtle Mountain to the Chippewa Cree Tribe and with that 298.7 is farmable, we received \$4,800 cash for this. We realize the 320 acres if we exchange it for 1,420 acres it is pretty lopsided but we're not looking at acre-for-acre we are looking at value-for-value. If you were to farm it yourself I know Mr. Kornec indicated he receives a farm subsidy on this of about \$10,000 per year. We went low, we went 25 bushels per acre and we probably received 7,467 bushels at \$4.80 per bushel which makes \$35,844. I am not sure if we did this exchange what the state's intentions are for the land. Some of the Tribal land loans are both wheat and barley, it is dry land farming with a strip farm on it we do have existing trails and a boundary road right next to it. There is no riparian areas, it is not in a flood zone, there is no hazardous waste, and both parcels are fenced. There are 1,440 acres of state land we are wishing to exchange. For 367 AUMs the state receives \$7.87 per AUM which equates out to \$2,888.79/year. Presently this is being leased to Burt Parkerin who is aware of what is going on and he is hoping they can exchange. If we do exchange it will be leased to Mr. Parkerin and his son. Some of the state land knowns, there is no commercial timber out there, there is no crop land, stockmen raised 367 AUMS, stockwater is available, the condition of the range is from fair to good, noxious weeds present are Russian knapweed, Canadian thistle, and Dalmatian toadflax. The grazing system is seasonal pasture, acreage is 1,440 acres, and there is existing trails and roads along the southern boundary. It is not in a floodplain area. Some improvements needed are 4.5 miles of fence, some reservoirs need to be cleaned up and there needs to be spring development. That reservoir has been sitting there for 40 years and it is probably getting silted in. Some of the reasons why we want to do a

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land exchange is consolidation of our Tribal lands, if we can get them all closer together. There are a couple of historical sites on this land and they have been identified by archaeologists and our cultural people. Another reason is Tribal economic development. We are also looking at grazing, homesite leases, zoning purposes and just better land management decisions can be made if our land was in one contiguous area. On these homesites for your information, on Rocky Boy Reservation there is presently 5,000 members living there they have done some projections and in the year 2030 they are looking at 16,000 people. That is larger than Havre, Montana. So you can see where we are going with this, homesites are needed. The state land would really help out. Presently we are putting homesites on some of our farmland and range land and it could be better used. That is some of the reasons why we would like to do this exchange.

Ms. McCulloch said on the map we have here of the state land and Tribal land, right next to one of the Tribal parcels proposed for exchange is the same color as the Tribal lands but it is squiggly lines, I just wonder who owns that.

Mr. Belcourt said there were other Turtle Mountain tracts out there. We only purchased two of the parcels.

Ms. Sexton said there are a number of scattered Turtle Mountain tracts in that area, I don't know how many acres.

Mr. Belcourt said there are quite a bit and for those folks who don't understand about the Turtle Mountain tracts, way back Turtle Mountain Tribes from North Dakota somehow worked with the U.S. Government and from the old Homestead Act they were acquired. Since then, there has been numerous owners on them to the point where they can't do anything with them. There are tracts all the way from the North Dakota border out to Gilford down to Miles City, so each Reservation Ft. Peck takes care of that area, Northern Cheyenne takes care of the Miles City area, Ft. Belknap takes care of everything from Ft. Belknap to Gilford. We just happened to get all these landowners together in the 1970s and purchased these two tracts. The Tribe has been purchasing quite a bit of acreage and over the last five years, we have purchased approximately 3,000 acres which is all farmland right now. We haven't put it into trust. It is quite a feat to try to get this into the trust we have to go through the county, state, and the federal government and if any one of them say no, you're done. Somehow hopefully we can work with Hill County and the State of Montana in this situation.

Ms. McCulloch said so you maintain the Turtle Mountain tracts?

Mr. Belcourt said no, Ft. Belknap does.

Mr. Johnson said I'm looking at the other islands of state land within the boundaries of the Reservation and I certainly agree it is in the Tribe's and the state's best interest to consolidate these landholdings. Would it be feasible for us in conjunction with this exchange to look at the Tribe purchasing through our land banking program those other tracts of land so we could consolidate our holdings and the Tribes?

Mr. Belcourt said I think the Tribe would be interested in doing something like that. I know there are other tracts within the exterior boundaries of the Reservation and there are approximately 1,700 acres. Every one of those state tracts are held by enrolled members of the Chippewa Cree Tribe for grazing purposes only.

Mr. Johnson asked Director Sexton can we at least do a preliminary evaluation of whether or not that is even feasible to look at those tracts being nominated for the land banking program?

Ms. Sexton said we did discuss that when I went up and visited with the Tribal members. With land banking it goes to public auction and I think in this case the Tribe wanted to make sure they acquired these lands and through land banking there is the opportunity other folks may come along, other tribal members and purchase these fee title so they would not go to the Tribe. In our discussion at least for these pieces we are going through the exchange avenue. But we certainly could look at that and discuss that opportunity to put the parcels up for land banking.

Mr. Morrison said I'm a strong supporter of consolidating lands within the Reservation and twenty years ago I worked on a federal bill called the Farm Credit Act of 1987 and one of the things we fought for and got was the right of the tribes to have the right of first refusal on defaulted FMHA loans within the Reservation. Frankly, I think the federal government should provide a lot more resources than they do for consolidation of fee lands within the boundaries of the Reservation. In this kind of deal we do have to, according to our own rules and obligations as managers of the trust, not deplete the overall acreage of the trust so after we give preliminary approval here we have to look for ways to make the trust whole in terms of acreage. That's why we have to take that approach.

Mr. Belcourt said we understand quite a bit of it. Ms. Sexton shed a lot of light on the land exchange and I know the appraisals need to be completed if we are going to do it. But we hope you will allow us to work with you folks and we are willing to do whatever needs to be done and will cooperate any way we can because it is our wish to consolidate all these lands.

Mr. Johnson said by way of clarification, did I understand you to say the Tribe has acquired additional other tracts outside of the Reservation?

Mr. Belcourt said no, those are the only two.

Motion was made by Ms. McCulloch to grant preliminary approval of the land exchange. Seconded by Mr. McGrath. Motion carried unanimously.

407-3 COMMUNITIZATION AGREEMENT -- KLABZUBA OIL & GAS INC.

Ms. Sexton said this is a request for approval of a communitization agreement, a standard agreement whereby there is insufficient area for the granting of a well permit so these are communitized in the area. The department owns 50% or 320 acres of the 640 acres. This is located in Hill County and is from the Klabzuba Oil and Gas Company. Once the communitization is approved the state will receive ½ of the royalty rates, 6.255% of all gas production. Ms. Sexton recommended approval.

Motion was made by Mr. McGrath to approve the communitization agreement. Seconded by Mr. Johnson. Motion carried unanimously.

407-4 RIGHTS-OF-WAY APPLICATIONS

A. Standard Rights-of-Way Applications

Ms. Sexton said we have 70 applications for rights-of-way this month. The first are typical right-of-way applications, county historic purchases. Beaverhead County has a number they have brought forward, I think about \$35,000 worth. Richland County also has a number as well as Prairie County. These are the historic right-of-ways on county roads and they do pay for easements across state land on county roads.

On page 70, there is a request from FWP regarding a shooting range near Makoshika State Park, that is where the shooting range exists at this time near Glendive in Dawson County. The issues of concern were regarding the proximity of the shooting range to the park and for general public safety so FWP approached the DNRC about relocating their shooting range to a tract of state land. There is a map in your packet that shows the west edge of Glendive and the location along Highway 2 where this proposed shooting range would be. It will be 357 acres FWP will be purchasing for public use an easement for the surface use of this land. FWP has completed an EA and I recommend approval of this request as well as the entire packet of rights-of-way applications.

Motion was made by Mr. McGrath to approve the rights-of-way applications. Seconded by Mr. Johnson. Motion carried unanimously.

B. Penmain Head Reciprocal Access Agreement

Ms. Sexton said this is a reciprocal access agreement with the Penmain LLC out of Georgia. They want access to 4,500 acres of land they have near Garrison Junction. It is interspersed with state trust land. We have no access to our Section 36 there. There is an additional map which was not included in your packet and was just handed out that has a vicinity map showing the two drainages. We will grant a 60-foot access across the described lands in Section 16 and the cost will be borne by each party. As we gain access when we do the exchange cost on this the state will owe the Penmain Corporation \$6,211 and we will also owe \$3,000 to the common schools beneficiary which will come out of our access account. The benefit to the state is it will receive a 60-foot right-of-way for all lawful purposes for 1,400 acres of land and we will get motorized access to 640 acres as a result of this project. Both the state and the Penmain have agreed to pay the 1% conveyance fee as stipulated in our new reciprocal access policy should there be any development on these properties. Ms. Sexton recommended approval of the access agreement along with the payment to be made by the department in the amount of \$3,116 to common schools and \$6,211 to the Penmain Head LLC.

Motion was made by Ms. McCulloch to approve the Penmain Head reciprocal access agreement. Seconded by Mr. Morrison. Motion carried unanimously.

C. Extent of Rights Project – EOR-38

Ms. Sexton said we are bringing back the reciprocal access agreement Extent of Rights process with Plum Creek. As you may remember in February 2007, we passed the first of these and this is from a process initiated in 2003 between Plum Creek and the state to standardize the rights and widths of existing easements. There were some errors made at this time and some of these access agreements, 39 of them to be specific, were granted but only at a 40-foot width. We would like to restate these at 60-feet in width. We had gone through a process earlier but had not been fully approved by the Land Board in 2004. So we are coming back again for Board approval of the restatement of these access easements. It is an ongoing process and phases II and III will be completed in the next two to three years. There will be no new rights granted, these will be amended and restated to the 60-foot right-of-way in order to be consistent with new policies and uses. Due to the increase in width this requires Board approval. There are maps associated with this request showing where the easements are located throughout the western part of the state.

Mr. McGrath asked will there be additional roads built?

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David Groeschl, DNRC Bureau Chief Forest Management Bureau, said there are no new roads that will be built under the EOR Phase I, these are all existing roads all existing easements and we are simply amending and restating and making the width consistent with our current policy of 60-foot.

Motion was made by Mr. Johnson to approve the EOR-38. Seconded by Mr. Morrison. Motion carried unanimously.

Lt. Governor Bohlinger said it looks like the state will be the beneficiary of \$23,562 for the additional roadway and public access.

INFORMATIONAL ITEM:

Ms. Sexton said as you all know we closed on the Tongue River Ranch. The press release went out on Friday. There has been some coverage on that but I want to thank you and the staff as well for bringing that to completion. I think that is going to be a positive addition to our holdings and certainly a nice asset for Eastern Montana as well as all of us.

Motion to adjourn was made by Mr. Morrison. Seconded by Mr. Johnson.